when the goods delivered do not comply with the order. *Aultman, Miller & Co.* v. *Clifford* (1893) 55 Minn. 159, 56 N. W. 593. But the vendee is under the duty to return the goods or to notify the vendor of his refusal to accept, *Reed* v. *Randall* (1874) 29 N. Y. 358, and any act of ownership after the goods are delivered will be taken to indicate an acceptance binding the vendee to a payment of the purchase price, *Brown* v. *Foster* (1888) 108 N. Y. 387, 15 N. E. 608; *Thompson Machine etc. Co.* v. *Graves* (Conn. 1916) 98 Atl. 331; Sale of Goods Act (1893) § 35; Uniform Sales Act, § 48, but not where the act of ownership occurs before the receipt of the goods, see *Morton* v. *Tibbett* (1850) 19 L. J. C. L. 382, or if the acceptance is induced by fraud or misrepresentation. *Meyers* v. *Menifee & Co.* (1902) 30 Tex. Civ. App. 28, 68 S. W. 540. However, if the goods are to be delivered by installments, an acceptance of one installment does not preclude the right to reject the subsequent installments, *Schwartz* v. *Hirsch* (1907) 56 Misc. 618, 107 N. Y. Supp. 796, although a failure to comply with the conditions of one installment does not necessarily give the vendee the right to treat the contract as terminated. *Ellison Son & Co.* v. *Flat Top etc. Co.* (1911) 69 W. Va. 380, 71 S. E. 391. But when the goods are of a perishable nature, as in the instant case, there is an exception to the general rule and if the vendee communicates his rejection and, receiving no instructions, notifies the vendor of his intention to sell in order to prevent a total loss, the act of ownership in selling will not constitute an acceptance. *Descalzi Fruit Co.* v. *Sweet & Son* (1910) 30 R. I. 320, 75 Atl. 308; see *Richardson* v. *Levi* (N. Y. 1893) 69 Hun 432. Since a jury could have found in the instant case that the defendant had exercised ownership over the shipment without exerting every means to communicate, the holding is sound. The defendant may recover, however, for a breach of warranty of quality. Burdick, Sales (3rd ed.) 156 *et seq.*

STATUTE OF LIMITATIONS — CONCEALMENT OF CAUSE OF ACTION.— Premiums under a twelve-months' liability policy were based upon the estimated compensation to be paid by defendant insured to his employees during that period. Should the actual compensation exceed the estimated amount, an additional premium was to become due. Defendant, in violation of his contract, refused to allow plaintiff to inspect his books to ascertain actual compensation paid. In an action to recover additional premiums, defendant pleaded the Statute of Limitations. Plaintiff demurred, on the ground of fraudulent concealment of the cause of action. *Held,* the action was barred. *Fidelity & Casualty Co. of N. Y.* v. *Jasper Furniture Co.* (Ind. 1917) 117 N. E. 258.

The generally accepted rule is that fraudulent concealment of a cause of action tolls the Statute of Limitations, both at law and in equity, until after discovery. 2 Wood, Limitations (4th ed.) § 276f (1); see 10 Columbia Law Rev. 778. In Indiana this rule is statutory. Burns' Ann. Ind. Stat., Rev. 1914, § 302. To constitute fraudulent concealment there must be positive fraud. *Jackson* v. *Jackson* (1897) 149 Ind. 238, 47 N. E. 963; *Gunton* v. *Hughes* (1899) 79 Ill. App. 661. Mere silence is insufficient. *Despeaux* v. *Penna. R. R.* (C. C. 1898) 87 Fed. 794; *Glover* v. *National Bank of Commerce* (N. Y. 1913) 156 App. Div. 247, 141 N. Y. Supp. 409; but *cf. Allen* v. *Conklin* (1897) 112 Mich. 74, 70 N. W. 339. Moreover, it is essential that the plaintiff be misled as to the existence of a cause of action. *Sanborn* v. *Gale*

(1894) 162 Mass. 412, 38 N. E. 710. Hence, if he is reasonably put upon inquiry, *Ater* v. *Smith* (1910) 245 Ill. 57, 91 N. E. 776, or if the existence of a cause of action is discoverable by the diligent use of means at his command, *Wood* v. *Carpenter* (1879) 101 U. S. 135; *Moore* v. *Boyd* (1887) 74 Cal. 167, 15 Pac. 670, he is chargeable with knowledge, and under such circumstances, even a willful falsehood will not toll the statute. *Mereness* v. *First Nat'l. Bank* (1900) 112 Iowa 11, 83 N. W. 711; *Graham* v. *Stanton* (1901) 177 Mass. 321, 58 N. E. 1023. In the principal case there was no fraud; the plaintiff was not deceived. He was reasonably put upon inquiry, and his mere inability to obtain evidence should not excuse him. *Cf. Sanborn* v. *Gale, supra.* Hence, the court held rightly that the defendant's conduct, although a breach of contract, did not constitute fraudulent concealment of the plaintiff's cause of action.

TAXATION-FEDERAL INCOME TAX-ALIMONY.—The defendant in error obtained a divorce from her husband who was ordered to pay her $3,000 a month alimony. *Held,* the payments to her did not constitute income taxable under the Federal Income Tax Law of 1913, 38 Stat. 166. *Gould* v. *Gould* (1917) 38 Sup. Ct. 53.

The various definitions of income given by economists do not aid much in the determination of whether alimony is income since the legal and economic conceptions of income are totally different. Kennan, Income Taxation 1, *et seq.* The tendency in law has been to restrict the term to wealth accruing from certain limited sources. Thus, a typical American definition of income is "the gain which proceeds from property, labor or business". 2 Bouvier, Law Dict. (Rawles ed.), 1527; *cf. Gray* v. *Darlington* (1872) 82 U. S. 63; *Thorn* v. *DeBreteuil* (1903) 86 App. Div. 405, 83 N. Y. Supp. 849. The definition of taxable income contained in the Federal Income Tax Law of 1913, 38 Stat. 167, is substantially like that contained in the present law, Act Sept. 8, 1916, c. 463 § 2, 6 U. S. Comp. Stat. (1916) § 6336*b*, and though greatly elaborated, it differs little from the one given above unless the clause to the effect that income is "gains, or profits and income derived from any source whatever" should extend its meaning. It would seem that it did not have that effect, since "gains" when used in connection with "profits" is given the restricted meaning of gains from business, Frost, Federal Income Tax § 16, and the use of the word income in this clause throws us back on our former definition of income. Moreover, admitting the construction to be doubtful the more restricted meaning should be given, for a statute imposing a tax is to be construed most strongly against the government. See *American Net and Twine Co.* v. *Worthington* (1891) 141 U. S. 468, 12 Sup. Ct. 55. Alimony is an allowance which the husband is compelled to pay a wife divorced or living apart from him for the wife's maintenance. *Romaine* v. *Chauncey* (1892) 129 N. Y. 566, 29 N. E. 826. Since the value of this support could not be considered a part of the wife's income while she lived with her husband, it would seem to follow that this pecuniary substitute which the law allows to her by reason of her husband's failure to perform his marital obligations should likewise not be treated as income. But whether this is logically sound or not, it is clear that alimony is not revenue derived from property, labor, or business of the recipient and hence it is not embraced in the legal definition of income. It would seem, therefore, that the principal case is sound.